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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,005	12/02/2003	Baruch Segal	3116/1	3160

7590 11/15/2006

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EXAMINER

STULII, VERA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/725,005	SEGAL ET AL.	
	Examiner	Art Unit	
	Vera Stulii	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "optimal" in claims 1 and 10 is a relative term which renders the claim indefinite. The term "optimal" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claim 1 line 3 and claim 18 line 4, the use of word "known" is not clear. It is known to whom?

The term "maximal" ("minimal") in claim 3 is a relative term which renders the claim indefinite. The term "maximal" ("minimal") is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Slack (US 5,711,164).

Slack discloses a portable cooler “including a plastic bag or container with inflatable sidewalls into which are placed items for cooling, such as infant feeding bottles, food, soft drinks, etc” (Abstract). Slack discloses that “the plastic bag may also contain a frozen gel package to provide temporary cooling prior to use” (Abstract). Slack discloses that “a frozen gel package may be placed inside the container or in the top portion of the container” (Abstract). Slack discloses plurality of foods organized in groups of foods characterized by a substantially similar carbohydrate content (Abstract figure). Slack discloses that groups of foods characterized by a substantially similar carbohydrate content are stacked in levels (Abstract figure).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bangs et al (US 6,039,989).

In regard to claims 1 and 10, Bangs et al disclose therapeutic system and method for dietary health management (Col.1 lines 8 and 9). Bangs et al also disclose controlling levels of carbohydrates (Col. 6 lines 40-41). Bangs et al disclose a dietary health management system for administration to a patient having a diet responsive condition such as obesity (Col. 6 lines 43-45). Bangs et al disclose a system that provides prepackaged therapeutic meals which can be frozen or shelf-stable (Col.5 lines 59-62).

In regard to claim 1, Bangs et al also disclose "survival kit that may contain emergency snacks to satisfy an immediate need" (Col. 17 lines 25-28). Bangs et al also disclose that survival kit may be especially appropriate to persons who travel frequently" (Col. 17 lines 22-23).

In regard to claim 10, Bangs et al disclose consumption of a daily diet (Abstract).

In regard to claims 2-4, 12, 14-15, 18-21 and 23, Bangs et al disclose that each of the prepackaged (separately contained and prevented from spoiling) individual meals included within a group (Col.7 lines 8-10).

In regard to claims 5-6, 11, 13, 16 and 17, Bangs et al disclose that orange juice pouches were frozen with dry ice (Col. 33 lines 63-64).

In regard to claims 7-9 and 22, Bangs et al disclose a group identifying code corresponding to the type of meal (Col.7 lines 10). Bangs et al also disclose that identifying code may be selected from the group consisting of alphabetic indicia, color indicia, and combination thereof (Col. 7 lines 12-15).

Bangs et al is silent about shape, configuration, and portability of device/kit/apparatus for storing plurality of foods. Bangs et al is silent about stacking food in levels. Bangs et al is silent about using cooling packs.

The fact that a claimed device/kit/apparatus is portable is not sufficient by itself to patentably distinguish over the plurality of foods disclosed by Bangs et al (see MPEP 2144.04 (V)). It would have been obvious to modify teachings of Bangs et al. and make plurality of foods portable for the convenience purposes or for traveling purposes. The configuration of portable kit/device/apparatus is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed kit/device/ apparatus was significant. It would have been obvious to structure/ stack plurality of foods in levels according to the chosen shape of the desired claimed kit/device/ apparatus. The particular number of levels and number of foods in each level would have been a matter of personal choice.

As evidenced by Slack (US 5,711,164), it is common to use cooling packs in portable devices for storing plurality of foods for later consumption. Therefore, it would have been obvious to modify teachings of Bangs et al and use cooling packs in a portable kit/device/ apparatus, if necessary, in order to preserve the freshness of foods. The particular arrangement and color coding of cooling packs would have been a matter of personal choice.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

vs *V. Stulz*


KEITH HENDRICKS
PRIMARY EXAMINER